

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

NICKOLAS GORDON
KJELDERGAARD,

Plaintiff,

v.

EASMON, et al.,

Defendants.

No. 2:22-cv-01283-WBS-CKD P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 21, 2023, the magistrate judge filed findings and recommendations herein which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be largely supported by the record and by proper analysis. Specifically, the court adopts the recommendation that the first amended complaint be

1 dismissed, for the reasons stated in the findings and recommendations. However, because pro se
2 litigants must be given leave to amend their complaints “unless it is absolutely clear that the
3 deficiencies of the complaint could not be cured by amendment,” Cato v. United States, 70 F.3d
4 1103, 1106 (9th Cir. 1995), and because plaintiff has only amended his complaint once, the court
5 declines to adopt the recommendation that the complaint be dismissed with prejudice. Instead,
6 the court will grant leave to amend the first amended complaint one more time.

7 Accordingly, IT IS HEREBY ORDERED that:

8 1. The findings and recommendations filed July 21, 2023, are adopted to the extent they
9 are not inconsistent with the reasoning in this Order;

10 2. Plaintiff’s first amended complaint is dismissed with leave to amend; and,

11 3. Plaintiff is given 30 days from the date of this Order to file a second amended
12 complaint curing the deficiencies of the first amended complaint.

13 Dated: August 25, 2023



14 WILLIAM B. SHUBB
15 UNITED STATES DISTRICT JUDGE

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